

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

**Item No.** 4  
**Mtg. Date** November 4, 2014  
**Dept.** City Attorney's Office

**Item Title:** Ordinance No. 424 – Massage Therapy Practice: Local Licensing

**Staff Contact:** James P. Lough, City Attorney

**Recommendation:**

Staff recommends that the City Council waive further reading and adopt Ordinance No. 424 (**Attachment A**), an ordinance of the City Council of the City of Lemon Grove, California Amending Chapter 8.20 (Message Establishments) of the Lemon Grove Municipal Code and Renaming Chapter 8.20 (Massage Therapy Practice: Local Licensing).

**Item Summary:**

On October 21, 2014, the City Council introduced Ordinance No. 424 (**Attachment A**), an ordinance amending the Municipal Code regarding the City's massage establishment regulations. The ordinance brings the City's regulation in line with the California Massage Therapy Reform Act, which becomes effective on January 1, 2014. Ordinance No. 424 repeals Municipal Code Chapter 8.20 (Massage Establishments) and replaces it with a new Chapter 8.20 (Massage Therapy Practice: Local Licensing).

**Fiscal Impact:**

None.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review                 | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section <u>          </u> | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

A. Ordinance No. 424



# Attachment A

## ORDINANCE NO. 424

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA AMENDING CHAPTER 8.20 (MASSAGE ESTABLISHMENTS) OF THE LEMON GROVE MUNICIPAL CODE AND RENAMING CHAPTER 8.20 (MASSAGE THERAPY PRACTICE: LOCAL LICENSING)

**WHEREAS**, the State Legislature has amended statutes related to Massage Therapist practice in California; and

**WHEREAS**, the City of Lemon Grove has regulatory requirements that conflict with newly adopted State Law; and

**WHEREAS**, State legislation requires Cities to regulate the practice of massage therapy in accordance with state law as of January 1, 2015; and

**WHEREAS**, the City Council has determined that the regulation of massage therapists shall be limited to the authority granted to general law cities established by state law; and

**WHEREAS**, the City of Lemon Grove intends to adopt Massage Therapy regulations in a manner consistent with the delegation of authority from the state for business license; health and safety; and land use and other regulatory purposes allowed by state law; and

**WHEREAS**, the adoption of this new set of regulations places on the State of California the primary burden of determining that massage therapy is practiced in accordance with professional standards by qualified therapists.

**NOW THEREFORE**, the City Council of the City of Lemon Grove does ordain as follows;

1. Chapter 8.20 (Massage Establishments) is hereby renamed to Chapter 8.20 (Massage Therapy Practice: Local Licensing).

2. Chapter 8.20 (Massage Therapy Practice: Local Licensing) is hereby amended to read as shown in EXHIBIT "1".

**INTRODUCED** by the City Council on October 21, 2014. **PASSED AND ADOPTED** by the City Council of the City of Lemon Grove, State of California, on November 4, 2014 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Mary Teresa Sessom, Mayor

Attest: \_\_\_\_\_  
Susan Garcia, City Clerk

Approved as to form:

\_\_\_\_\_  
James P. Lough, City Attorney

# Attachment A

## EXHIBIT “1”

### 8.20.010 TITLE

This chapter may be cited as the “Lemon Grove Massage Therapy Business License Ordinance.”

### 8.20.020 PURPOSE

The purpose of this chapter is to implement local regulatory requirements, within the authority of the City of Lemon Grove, under the general laws of the State of California, to the fullest extent that local zoning, business licensing, police power and reasonable health and safety regulations are allowed.

### 8.20.030 RULES OF CONSTRUCTION

This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter the following provisions shall govern its interpretation and construction:

A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

B. All references herein, as applied to natural persons, shall be considered gender neutral.

C. Any right or power conferred or duty imposed upon any officer, employee, department or board of the city is subject to transfer by operation of law to any other officer, employee, department or board of the city. Any officer or enforcement person referenced herein shall have the authority to delegate enforcement duties in the manner allowed by procedures established by the City Manager or designee.

D. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

E. This chapter does not relieve any license or permit holder of any requirement of any ordinance, rule, regulation or specification of city or other regulatory body. This chapter does not limit applicable health and safety laws or regulations established by the County of San Diego or the State of California.

F. This chapter, to the extent that it retains requirements established prior to January 1, 2010 related to the professionally recognized scope of practice of healing arts professionals licensed under California Business & Professions Code Section 500 *et. seq.*, shall remain in full force and effect.

### 8.20.040 DEFINITIONS

For the purposes of this chapter, the words or phrases set forth in this section shall have the following meanings:

A. “Building inspection” means the building inspection component of the Lemon Grove Development Services Department.

B. “City” means the City of Lemon Grove, California.

C. “Certificate” means a valid certificate issued by the California Massage Therapy Council pursuant to the California Massage Therapy Act (California Business & Professions Code Section 4600 *et. seq.*).

# Attachment A

D. "Council" or "State Council" means the California Massage Therapy Council created by the California Legislature pursuant to the California Massage Therapy Act (California Business & Professions Code Section 4600 *et. seq.*), as amended.

E. "County" means the County of San Diego, a political subdivision of the State of California.

F. "Health department" means the department of public health of the County.

G. "Independent contractor" means a massage therapist or massage practitioner who is not an employee of a massage establishment, but practices at the massage establishment as defined in applicable state law.

H. "License" means the business license to operate a massage therapy business required by this chapter.

I. "Massage" means the scientific manipulation of soft tissues. For the purpose of this chapter, "massage" and "bodywork" shall have the same meaning.

J. "Massage establishment" or "establishment" means a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

K. "Massage practitioner" means a person who is certified by the State Council pursuant to Business & Professions Code Section 4604.2 and who administers massage for compensation.

L. "Massage therapist" means a person who is certified by the State Council pursuant to Business & Professions Code Section 4604 and who administers massage for compensation.

M. "Permit" means the business license permit to engage in the business and certified by the State Council to perform the business activities regulated herein.

N. "Person" means a natural person, firm, partnership, association, corporation or other legal entity. Nothing herein confers rights to a firm, partnership, association, corporation or other legal entity to receive a certification under Business & Professions Code Section 4604 or 4604.2.

O. "Solo provider" means a massage business where the owner owns 100% of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with the California Massage Therapy Act, and has no other employees or independent contractors.

## **8.20.050 LICENSE-REQUIRED-ISSUANCE REQUIREMENTS**

A. It is unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city, the operation of a massage therapy practice as defined in the California Massage Therapy Act, without the business license required by this chapter.

B. No business may advertise, or hold itself out to the public, as a massage business unless it meets the applicable requirements of the Lemon Grove Municipal Code including, but not limited to, Titles 17 (Zoning) and 18, (Citywide Regulations) and meet all of the requirements found under the California Massage Therapy Act, as amended.

C. Independent contractors of local massage therapy businesses shall each obtain a business license prior to operating within the City of Lemon Grove. Each independent contractor shall possess a state certificate as a massage practitioner or massage therapist in order to be eligible to receive a business license. Any independent contractor whose state

# Attachment A

certificate has been suspended or revoked shall not be able to practice massage therapy unless and until that independent contractor receives a new certificate or a reactivated certificate.

D. An applicant who is denied a business license may request a hearing under Chapter 5.08 (Uniform Permit Procedures). Failure to have a valid certificate issued by the California Massage Therapy Council shall be grounds for denial of a business license. Upon suspension or revocation of any certificate by the State Council, the certificate holder shall also be prohibited from practicing under any validly issued business license until reinstated as a certificate holder by the California Massage Therapy Council under the California Massage Therapy Act, as amended.

## **8.20.060 LICENSE-APPLICATION-ADDITIONAL INFORMATION**

A. The application for a license to operate a massage therapy establishment shall set forth the proposed place of business and facilities therefor, and the name and address of each applicant and whether it will operate using independent contractors as massage practitioners and/or massage therapists. Each independent contractor shall be required to obtain a business license to practice massage therapy at a business in the City of Lemon Grove.

B. In addition to the foregoing, any applicant for a license shall furnish the following information:

1. Proof of a valid and active certificate to practice as a massage practitioner or massage therapist in the State of California;

2. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, and directors; and

3. Any business entity, regardless of form, that has independent contractors who operate as massage practitioners or massage therapists within the City shall submit a list of independent contractors that work with the business entity within thirty days of contracting with the independent contractor to practice in Lemon Grove or operate from the business location within the City.

4. An independent contractor shall list the location(s) of businesses where the independent contractor practices massage therapy in the City of Lemon Grove.

## **8.20.070 OTHER BUSINESS LICENSE REGULATIONS**

To the extent they are applicable, the provisions of Title 5 (Business Taxes, Licenses, Permits and Regulations) govern the businesses authorized under this Chapter. 8.20.080 VIOLATION-PENALTY

A. Every person, except those persons who are specifically exempted by this chapter whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or acting as a participant or worker in any way, who gives massages or conducts a massage establishment or practices the giving or administering of any of the services defined in Section 8.20.040 without first obtaining the necessary permit or license shall be guilty of a misdemeanor and/or infraction as determined by the City Attorney.

B. Any owner, operator, manager or permittee in charge or in control of a massage establishment who knowingly employs a person performing as a massage practitioner or massage therapist, as defined in this chapter, who is not in possession of a valid, unrevoked permit, or who allows such massage technician to perform, operate or practice within such place of business, is guilty of a misdemeanor and/or infraction as determined by the City Attorney.

## Attachment A

C. Any owner, operator or manager shall require that all employees and independent contractors possess a valid certificate to practice as a massage practitioner or massage therapist. Any business found to be operating with an employee or independent contractor who does not possess a valid state certificate shall be in violation of the requirements of this chapter.

D. Enforcement of the provisions of this Chapter shall be governed by the procedures established under Title 1 (General Provisions) of the Lemon Grove Municipal Code. All remedies listed therein are cumulative, in addition to any other remedies available under the general laws of the state, may be utilized to remedy violations of this municipal code. Upon any finding (administrative or legal) that any person is practicing massage therapy without a valid license from the City of Lemon Grove or the State of California, the massage establishment or solo provider shall lose their business license granted hereunder subject to the applicable appeal process.

|